

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1612-01  
Bill No.: HB 467  
Subject: Business and Commerce; Employees - Employers; Labor and Industrial Relations  
Dept.; Workers' Compensation  
Type: Original  
Date: February 24, 2003

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
General Revenue	(Greater than \$682,995)	(Greater than \$703,485)	(Greater than \$724,589)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Greater than \$682,995)</b>	<b>(Greater than \$703,485)</b>	<b>(Greater than \$724,589)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Insurance Dedicated	\$15,850	\$0	\$0
Second Injury	(Could Exceed \$1,000,000)	(Could Exceed \$1,000,000)	(Could Exceed \$1,000,000)
Workers' Compensation	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)
Conservation	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Highway	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(Could Exceed \$1,000,000)</b>	<b>(Could Exceed \$1,000,000)</b>	<b>(Could Exceed \$1,000,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

### FISCAL ANALYSIS

#### ASSUMPTION

Officials from the **Secretary of State's Office** assume the proposal would have no fiscal impact on their office.

Officials from the **Office of the State Courts Administrator** assume the proposal would have no fiscal impact on the Courts.

Officials from the **Department of Economic Development – Division of Professional Registration** assume the proposal would have no fiscal impact on their division.

Officials from the **State Treasurer's Office (STO)** assume the proposal would have no fiscal impact on their office. STO notes there will be a state impact and defers to the Office of the Attorney General and the Department of Labor and Industrial Relations for the numbers.

Officials from the **Department of Insurance (MDI)** state insurance companies will be required to reimburse for additional benefits as required by the proposal. As the policies that are written say they will conform to state laws, MDI believes new policy forms will not be required. Workers' Compensation insurers will most likely revise their rates. Rates must be filed with the department for review and be accompanied by a \$50 filing fee. One-time additional revenue to the Insurance Dedicated Fund is estimated at \$15,850 (317 insurers x \$50/company/filing).

ASSUMPTION (continued)

MDI notes changing the number of employees from 5 to 1 to be deemed an employer under workers comp will increase the number of employers paying workers comp premiums. This will in turn generate additional workers comp taxes and second injury fund surcharges to be paid.

**Oversight** notes the assumption that insurance companies will have to increase their premiums is speculative and shows no increase in premium taxes or administrative surcharges paid.

Officials from the **Department of Higher Education** assume the cost of scholarships paid would be paid out of the Second Injury Fund and estimate the cost to exceed \$1.5 million annually.

**Oversight** interprets the proposal to identify the employer as the entity responsible for paying scholarships and assumes there would be no impact to state funds, except for those cases where the state is the employer or the employer is uninsured.

Officials from the **Office of Administration – Division of General Services (DGS)** state the proposal has the potential to increase the cost of the state's self-insured Workers' Compensation program. Changes include allowing the employees to select their own medical care, expanding mileage reimbursement and subjecting the employer to vocational rehabilitation costs are a few of the changes which have potential costs that cannot be determined at this time.

DGS notes §287.170 would increase the temporary total disability (TTD) maximum benefit rate from 105% of the state's average weekly wage to 200%. Based on current data, it appears 6 out of 831 time lost claims would hit the maximum rate. These claims average approximately 7 weeks and 3 days in lost time. Applying the current maximum rate of \$649.32 a week (\$92.76 daily), the TTD paid would be \$4,823. At the proposed maximum rate the payment would be \$9,187, an increase of \$4,364. Most would not hit the new maximum rate but would fall in between the new ranges, therefore we apply 50% or a cost increase of \$2,182. §287.180 increases the maximum rate of temporary partial from 105% to 200% of the state average weekly wage (SAWW). §287.190 increases the maximum permanent partial disability (PPD) rate from 55% to 100% of the SAWW. The current PPD maximum weekly rate of \$340.12 (\$26,532 annual salary) would increase to \$618.40 (\$48,280 annual salary). The mid point salary involved would be \$37,406. Then applying the workers' compensation formula of two-thirds, divided by 52 weeks to \$37,406 equates to \$497.56 weekly. Going from \$340.12 weekly to \$497.56 weekly is a 41% increase. Based upon past data, 30.7% would exceed the current maximum PPD rate. If you apply a 41% increase in the 30.7% of effected cases of the \$5,367,852 paid out in settlements in FY 2002, there would be an increase in costs of \$675,813. The maximum rates for permanent total and death benefits are also increased. Burial expenses would increase from \$5,000 to \$10,000. We average approximately one death a year or an additional cost of \$5,000. DGS estimates costs to General Revenue to exceed \$700,000 annually.

ASSUMPTION (continued)

Officials from the **Attorney General's Office (AGO)** estimate their agency would request additional staff (5 assistant attorney generals, 1 paralegal and 2 secretaries). AGO assumes the proposal would mainly affect partial disability claims filed against the Second Injury Fund (SIF). If SIF cases were allowed to be submitted on medical reports, cases previously settled or dismissed would be taken to hearing resulting in an additional 800 to 1,200 cases. Along with this increase, appeals would increase. In order to adequately defend these cases, SIF attorneys would have to cross-examine the claimant's doctor. AGO estimate annual costs of approximately \$325,000. AGO assumes there is a possibility of a substantial loss to the SIF. AGO estimates the loss to the SIF would be \$5.0 million annually. The effect of the admission of independent medical examinations is unknown and therefore difficult to quantify; but AGO assumes the results would, on the whole, be favorable to the AGO's position defending the SIF, and would offset the \$5 million loss to some degree. (§287.210)

**Based on an Oversight Subcommittee decision on March 30, 1998, the fiscal impact of this proposed section is assumed to be zero.**

Officials from the **Department of Labor and Industrial Relations** provided the following response:

§§ 287.141, 287.146, 287.148, and 287.149, RSMo, change the procedure for vocational rehabilitation hearings. The director may issue a mandatory order. The Department will be required to establish a new hearing procedure. The Department is unable to estimate the cost. The Department assumes that most if not all permanent total disability cases will be reviewed under the guidelines established by the bill. Cost unknown.

These sections raise the Second Injury Fund physical rehabilitation benefit to 50% of the employee's temporary total disability rate from \$40. This change will be a significant cost to the Second Injury Fund. There were 458 physical rehabilitation cases paid in FY 02, with a total dollar amount of \$ 209,020.50. However, the Department has no method to determine the employee's temporary total disability rate in those cases where these benefits are paid. Cost unknown.

§ 287.160, RSMo, provides that the Second Injury Fund would be liable for prejudgment interest on permanent total disability and death cases. That is, instead of the date of the award or appeal being the start date for interest calculation, the date of the employer's responsibility for temporary total disability benefits would be the start date for the calculation of interest. The Department paid permanent total disability benefits and death benefits in 52 new cases. This will be a

ASSUMPTION (continued)

one-time payment made after the award is issued or becomes final, with interest calculated and paid from the date the permanency was established. The Department does not have information to calculate this. Cost unknown, potentially in excess of \$100,000.

§ 287.190, RSMo, changes permanent partial disability benefits to increase to 100% of the SAWW from the current limit of 55% of the SAWW. The SAWW for FY 03 is \$ 618.40. This will cause an increase in permanent partial disability benefits paid by the Second Injury Fund. The Second Injury Fund paid permanent partial disability benefits in 3,988 cases in FY 02, with a total dollar amount of \$ 31,568,918.09. Most permanent partial disability injuries settle at or close to the current limit. The Department believes there will be significant costs, although they are impossible to estimate. Most cases will come in under the new cap, but the Department cannot determine how much of an increase would be payable in each case and cannot determine a total cost. Cost unknown, potentially in excess of \$1,000,000.

§ 287.203, RSMo, will result in more hardship hearings being set under that section. This will have a limited impact because the current Department policy on setting all hardship applications would comply with § 287.203. \$0 Cost.

§ 287.220.5, RSMo, will potentially have a significant effect on the Second Injury Fund. All workers' compensation benefits for injured employees of uninsured employers would be payable from the Second Injury Fund. There were 31 uninsured medical cases paid by the Second Injury Fund in FY 02. The Department assumes a 20% increase in cases because of the increased benefits available to the injured employee, increasing the number of cases to 37. However, the Department is unable to estimate the cost impact because the compensation rate for these injured employees cannot be determined. Cost unknown, potentially over \$100,000.

§ 287.220.9, RSMo, allows the employee to claim all benefits that would be due from a second employer for the effect of the injury from the first employer. Currently only temporary total disability benefits are paid. There were 81 cases where benefits were paid in FY 02, with a total dollar amount of \$ 206,233.67. The employee would be eligible for permanent partial disability benefits, permanent total disability benefits, and death benefits. The Department cannot estimate the cost of this change because the compensation rate to determine these benefits will vary from case to case. Cost unknown.

§ 287.240, RSMo, raises the maximum death benefit to 200% of the SAWW which will increase the potential liability of the Second Injury Fund on uninsured death cases. There were no new uninsured death cases where the Second Injury Fund began to pay benefits in FY 02. Again, as with permanent total disability benefits, few cases are paid at the maximum and this will not result in a significant increase in costs. Cost unknown.

ASSUMPTION (continued)

§ 287.240.11 and .12, RSMo, would provide for \$4,000 per post secondary school year for up to five years for dependents of a deceased worker. This will cost the Second Injury Fund where benefits are paid to the dependents of deceased employees of uninsured employers. There is potential to incur these costs in every case because the spouse is covered, plus any minor dependents. The Department does not know how many dependents could be eligible for these benefits. Cost unknown.

§ 287.250.2, RSMo, provides that wages includes fringe benefits and other enumerated items. This change may increase an employee's compensation rate and result in higher benefits being paid for permanent partial disability benefits and permanent total disability awards and settlements. An undetermined number of employees will receive increased awards, based on benefits the employer pays. The Department cannot estimate the number of employees that would have an increased compensation rate and the amount of benefits that would be attributable to the wage for calculation of the compensation rate. The Second Injury Fund will be affected because increased compensation rates will change the amount of permanent partial disability benefits, permanent total disability benefits, temporary total disability benefits, and death benefits paid to the injured employee. Cost unknown.

§ 287.250.8, RSMo, will also increase an employee's compensation rate. The employee's compensation rate will be based on the total wages of all jobs. This change may significantly increase the compensation rate of injured employees. The Second Injury Fund will be affected because increased compensation rates will change the amount of permanent partial disability benefits, permanent total disability benefits, temporary total disability benefits, and death benefits paid to the injured employee. Cost unknown.

§ 287.430, RSMo, changes the statutes of limitations to extend the periods of time to file claims against the employers and the Second Injury Fund. The Department cannot determine whether additional number of claims would be filed against the Second Injury Fund for the payment of benefits. Most attorneys currently file against the Second Injury Fund as part of the claim now. Based on that fact, the effect should be limited. Cost unknown.

§ 287.560, RSMo, adds significant items to be taxed as costs of the case. The section provides that the costs are paid by the employer. There is no fiscal impact on the Department. \$0 cost.

DOL also anticipates an overall administrative impact to the Workers' Compensation Administrative Fund to be unknown, greater than \$100,000, annually.

**Oversight** notes the Department of Labor and Industrial Relations estimates this proposal would increase costs to the SIF more than \$1million due to changes in the definition of statewide

ASSUMPTION (continued)

weekly wage and percentages of statewide average weekly wage which would be the basis of payments.

**Oversight** notes none of the responding agencies directly addressed the section of the proposal that addresses occupational diseases and peace officers, emergency medical technicians or other health care workers. In response to a similar proposal from the current session, **Oversight** assumed:

- (1) There would not be enough people to get sick in a given year to cause costs to the Second Injury Fund to be greater than \$100,000 and therefore assume costs less than \$100,000;
- (2) There could be a resulting negative impact to General Revenue, Conservation Fund, Highway Fund and Second Injury Fund; and
- (3) Local law enforcement agencies, which are self-insured, could experience increased costs to their Workers' Compensation fund arising from potential increases in out-of-pocket costs and increased contributions to the fund.

**This proposal would increase total state revenue.**

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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**INSURANCE DEDICATED**

Income – MDI

Filing Fee Resulting from Insurance  
Companies Revising Rates.

<u>\$15,850</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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## GENERAL REVENUE

### Costs – DGS

Various Increases to State's Workers' Compensation Program	(Greater than \$682,995)	(Greater than \$703,485)	(Greater than \$724,589)
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Increase in Amounts Paid for Workers' Compensation Cases (Peace Officers)	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)
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<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(Greater than \$682,995)</u></b>	<b><u>(Greater than \$703,485)</u></b>	<b><u>(Greater than \$724,589)</u></b>
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## SECOND INJURY FUND

### Costs – DOL

Increased Costs From Various Provisions of the Proposal	(Could Exceed \$1,000,000)	(Could Exceed \$1,000,000)	(Could Exceed \$1,000,000)
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Increase in Claims Paid (Peace Officers)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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<b>ESTIMATED NET EFFECT ON SECOND INJURY FUND</b>	<b><u>(Could Exceed \$1,000,000)</u></b>	<b><u>(Could Exceed \$1,000,000)</u></b>	<b><u>(Could Exceed \$1,000,000)</u></b>
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## WORKERS' COMPENSATION

### Costs – DOL

Increased in Administrative Costs Due to Increased Employers and Increased Number of Claims	<b><u>(Greater than \$100,000)</u></b>	<b><u>(Greater than \$100,000)</u></b>	<b><u>(Greater than \$100,000)</u></b>
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<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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**CONSERVATION FUND**

<u>Costs – Department of Conservation</u>			
Increase in Amounts Paid for Workers’ Compensation Cases (Peace Officers)	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>

**HIGHWAY FUND**

<u>Costs – Department of Conservation</u>			
Increase in Amounts Paid for Workers’ Compensation Cases (Peace Officers)	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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**VARIOUS LOCAL FUNDS**

<u>Costs – Law Enforcement Agencies</u>			
Increase in Out-of-Pocket Costs and Increase in Contributions Paid to Fund	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<b>ESTIMATED NET EFFECT ON VARIOUS LOCAL FUNDS</b>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

This proposal would cause all Missouri businesses to pay higher Workers’ Compensation insurance premiums.

## DESCRIPTION

This proposal makes several changes to the workers' compensation law. The proposal:

- (1) Changes the number of employees from "five or more" to "one or more" to be deemed an employer for the purposes of Workers' Compensation;
- (2) Extends benefits to all partners and sole proprietors;
- (3) Prohibits members of limited liability companies from electing to reject workers' compensation coverage;
- (4) Clarifies that though an employer may not be liable under the provisions regarding contractors, subcontractors, and landlords, they are not immune from civil actions brought by an employee or an employee's dependents;
- (5) Extends the definition of "occupational disease" to include diseases of the immune system and diseases of the blood and vascular system, extends the definition of "disability due to exposure" to include contact with bodily fluids of another person as an incidence of employment and contact with used needles, syringes, or other medical apparatus, and extends exposure to psychological stress to include peace officers, emergency medical technicians, and other health care workers. If a direct causal link is established, a rebuttable presumption of a compensable injury or disease is created;
- (6) Extends coverage to real estate agents and direct sellers;
- (7) Requires insurance companies to provide detailed claim and financial information to the Division of Workers' Compensation when required, to operate a physical office within the state, and to have all Missouri claims adjusted by a person in this state;
- (8) Prohibits corporations with no more than two owners who are also the only employees from withdrawing from workers' compensation provisions;
- (9) Requires a fiscal note to be written as to the savings created by any amendments to the workers' compensation law that reduce the amount of compensation benefits received by injured employees or their dependents and requires a commensurate reduction in the premium charged to employers;
- (10) Extends workers' compensation law to include all injuries and occupational disease contracted outside of Missouri if the employee is a resident of this state at the time;

## DESCRIPTION (continued)

(11) Restricts employers' immunity from civil suits in some cases;

(12) In current law, if an injury is caused by the failure of an employer to comply with state statute, compensation shall be increased 15%. This proposal extends this increased compensation to failure of the employer to comply with any federal law or regulation. In addition, the employer shall not be granted immunity from civil liability;

(13) Requires that the statute of limitations begin running when an employer obtains knowledge of an injury. If liability is not rejected within 90 days after the date of the filing of a claim for compensation, the injury is presumed compensable;

(14) Allows an employee to select a medical provider at the employer's expense if the employer is notified before the examination. The employer shall pay mileage in addition to necessary and reasonable expenses. Removes the cap relating to transportation reimbursements limited to 250 miles round trip for treatment. The employee, not the employer, has the right to select all health care providers;

(15) When physical rehabilitation is necessary, this proposal changes the weekly benefit from the Second Injury Fund from \$40 per week to a sum equal to 50% of the temporary total disability compensation rate;

(16) Allows occupational diseases to qualify for vocational rehabilitation. Makes changes regarding evaluation of vocational rehabilitation services. If vocational rehabilitation is retained, the provider shall begin delivering service within 10 days as opposed to 90 days;

(17) Defines "suitable, substantial, and gainful employment" with reference to vocational rehabilitation in that the employee returns to no less than 85% of prior wage or to employment which exceeds the average prevailing wage for given job as determined by the Department of Labor and Industrial Relations;

(18) Sets the date at which interest penalties can be charged for weekly benefit payments at 30 days past the due date;

(19) Increases the maximum weekly compensation paid to 200% of the state average weekly wage and the minimum to 50% of the state average weekly wage after August 28, 2003. This applies to temporary total disability, temporary partial disability, permanent partial disability; permanent total disability and death benefits;

DESCRIPTION (continued)

(20) Increases the frequency range for hearing loss due to industrial noise from 2,000 to 4,000 cycles per second;

(21) If an employee is adjudged as being disabled pursuant to a claim for social security disability income benefits, such judgment creates a rebuttable presumption of permanent total disability;

(22) Allows testimony of a treating physician to be submitted in evidence on the issues in controversy by a complete medical report which shall be admissible in claims against the Second Injury fund;

(23) Adds loss of vision and loss of hearing to permanent disability in section 287.220, RSMo;

(24) Adds the following classes of disability – temporary total, temporary partial, permanent partial, and permanent total – to those which may be drawn from Second Injury funds to cover expenses to cure and relieve effects of employees injured in the employ of uninsured employers. The injured employee's dependents shall also be entitled to file a claim against the Second Injury Fund for the above;

(25) Regarding death benefits, the employer shall pay up to \$10,000 for burial as opposed to \$5,000 in current law;

(26) Requires that within 30 days of notice of an employee's compensable death that employers pay to the total dependents an advancement of compensation of \$25,000;

(27) Entitles dependents of employees who die of compensable injuries to \$2,000 per semester scholarships to Missouri accredited postsecondary institutions for five years. If at the time of death the employee left no survivors entitled to benefits pursuant to this section, the employer shall pay \$25,000 to Kid's Chance of Missouri, Inc.;

(28) "Wages" includes fringe benefits;

(29) Requires employers to conduct reasonable investigations of all claims for workers' compensation prior to denying these claims. Failure to conduct a reasonable investigation prior to denial shall constitute a waiver of immunity from civil liability;

(30) Removes the Second Injury Fund from the requirement that filing a claim under Workers' Compensation be filed within two years after date of injury/death. A claim against the Second Injury Fund shall be filed within five years;

DESCRIPTION (continued)

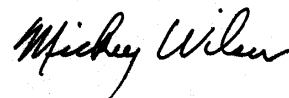
(31) Requires employers or insurers requesting depositions of employees or dependents to provide additional benefits (all reasonable expenses, reimbursement of lost wages, attorney's fees, interpreter fees); and

(32) Defines "medical legal expense."

This proposal is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Secretary of State's Office  
Office of the State Courts Administrator  
Department of Economic Development – Professional Registration  
State Treasurer's Office  
Department of Insurance  
Department of Higher Education  
Office of Administration – Division of General Services  
Office of the Attorney General  
Department of Labor and Industrial Relations



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FEBRUARY 24, 2003